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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/707,156	11/06/2000	Vivian A. Schramm	MRS-015U	8663
52966	7590	10/26/2009		
Michael R. Schramm 350 West 2000 South Perry, UT 84302			EXAMINER WEINSTEIN, STEVEN L.	
			ART UNIT	PAPER NUMBER
			1794	
			NOTIFICATION DATE	DELIVERY MODE
			10/26/2009	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary

Application No.

09/707,156

Applicant(s)

SCHRAMM ET AL.

Examiner

Steven L. Weinstein

Art Unit

1794

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 August 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14 and 21-26 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-14 and 21-26 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/02)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

Claims 1-14 and 21-26 are rejected under 35 U.S.C. 112 first paragraph for containing New Matter and being based on a non-enabling disclosure for the reasons given in the Office action mailed 5/19/09.

As noted previously, the various length/volume recitations previously presented in claims 1,8 and 21, and further including the newly added recitations added to claim 21 relative to the gap/diameter of the handle/diameter of the candy article are New Matter, not necessarily and inherently supported by the specification as originally filed. This urging is not convincing. None of these spatial relationships are disclosed in words in the specification and it is not seen that the figures can be used to support spatial, including volumetric, relationships between elements.

Claims 1-14 and 21-26 are first rejected using Product Alert (3/23/98) as the primary reference.

That is, claims 1-14 and 21-26 are rejected under 35USC103(a) as being unpatentable over Product Alert (3/23/98), as further evidenced by Product Alert (8/9/99, part 1), Product Alert (8/9/99, part 2), Candy Warehouse (3/27/03), the references labeled exhibits A,B,D,F and G, Baker (WO 00/19803), Coleman ('884), Hoeting et al ('870) and applicants' admission of the prior art, in view of Price (3,840,678), as further evidenced by Hunter (GB ('356), Williams ('174), Ciffo (2,917,766), Schramm ('046), Martindale ('797), Kennedy ('390), Beutlich et al (GB '581), McCombs ('714), Meth ('599), Patterson ('975), Corteggiani et al (FR'917), Pilot Ink (JP'388), and McCaffery ('164), and further in view of Vogelsang (4,522,523) and

Manzone (4,522,523), essentially for the reasons fully and clearly set forth in the Office actions mailed 11/6/08 and 5/19/09.

As discussed previously the particular dimensional/volumetric relationships between the various elements are seen to have been an obvious result effective variable, routinely determinable, and an obvious matter of choice. Claim 21 now links newly recited dimensional relationships with the functional capability that such relationships provide for the capability of the particulate material to "flow" around substantially the entire exterior of the candy article so as to enable the coating of substantially the entire exterior of the candy article. Thus, the claim links dimensional relationships to a capability of the container, via an intended use thereof. As noted above, these dimensional relationships are New Matter not necessarily and inherently supported by the application as originally filed. In any case, the art taken as a whole disclose various product containing container structures that include an anti-spill funnel as well as a dipable device to be inserted in the container to associate some of the contents of the container with the dipping device to remove a portion of the contents from the container, and wherein the dipping device is separate from or associated with a lid for the container. The containers of Ciffo, Price, Schramm ('046), McCombs, Corteggiani et al, Pilot Ink and Vogelsang all disclose container/contents/dipper device dimensional arrangements wherein the contents are capable of flowing around substantially the whole part of the dipper device that one wishes to have the contents applied thereto whether that flowing is the result of immersing the dipper device into the product or shaking the container and thus the dipper device and the contents of the

container. The containers could, at any time, be capable of being shaken, and is a matter of intended use and thus how one applies the contents to the container is seen to have been an obvious matter of intended use. Note, too, that although Hoeting et al does not disclose a funnel, Hoeting et al unequivocally discloses that the container is dimensioned such that the container can be shaken to cause the contents to coat the candy (col. 6, para.2). The claims are directed to a container and not a method of using the container. It is also noted that applicants only disclosed method of associating the candy article with the particulate substance is by shaking the container (page 7, para. 1).

Claims 1-14 and 21-26 are also rejected under 35 U.S.C. 103(a) using Price as the primary rejection.

Thus, claims 1-14 and 21-26 are rejected under 35 USC 103(a) as being unpatentable over Price (3,840,678), as further evidenced by Hunter (GB ('356), Williams ('174), Ciffo (2,917,766), Schramm ('046), Martindale ('797), Kennedy ('390), Beutlich et al (GB '581), McCombs ('714), Meth ('599), Patterson ('975), Corteggiani et al (FR'917), Pilot Ink (JP'388), and McCaffery ('164), in view of Product Alert (3/23/98), as further evidenced by Product Alert (8/9/99, part 1), Product Alert (8/9/99, part 2), Candy Warehouse (3/27/03), the references labeled exhibits A,B,D,F and G, Baker (WO 00/19803), Coleman ('884), Hoeting et al ('870), and applicants' admission of the prior art, for the reasons fully and clearly set forth in the Office action mailed 11/6/08,

and further in view of Vogelsang ('523) and Manzone, essentially for the reasons fully and clearly set forth in the Office actions mailed 11/6/08 and 5/19/09 and for the reasons given above.

All of applicants remarks, filed 8/19/09, have been fully and carefully considered but are not found to be convincing for the reasons of record and the remarks made above in the body of the rejection. Further, applicants urge that taking measurements of the originally filed drawings and then using the measurements to calculate the geometrical relationships, support the recited geometrical relationships. This urging and the reasoning behind it is faulty because the Courts have held that it is well established that patent drawings do not define the precise proportions of the elements and may not be relied on to show particular sizes if the specification is completely silent on the issue (*Hockerson-Halberstadt, Inc. v. Avia Group Int'l*, 222 F.3d 951,956, 55 USPQ2d 1487,1491 (fed Cir. 2000)). See also MPEP Sec.2125 in this regard. It is noted that the specification is completely silent as to the particular sizes, let alone any functional result that may be derivable from employing those sizes and dimensional relationships. Thus, there is nothing in the record that evidences that applicants had in their possession at the time of filing the invention any recognition of specific dimensional relationships and any functional advantage derived therefrom.

Applicants further urge that particulate solids act differently than liquids. Certainly a particulate solid will generally provide greater resistance to a force than a liquid, but a particulate solid, like a liquid, will coat a wetted solid when the container containing the particulate solid and wetted solid is shaken. As noted above, the specification only

discloses shaking the container and does not further describe how the container is shaken. As also noted above, Hoeting et al discloses that a wetted solid can be coated by a particulate solid by shaking the container that contains both of the components. The specification does not disclose forcing the wetted solid against a particulate solid that has been shaken, and the coating can clearly be performed by shaking without applying force.

Although applicants note that they base their response on the previous Office action applying 35USC103, applicants urge that the Office action is incomplete since no citation of law has been provided as a basis for the examiner's rejection. This urging is incorrect. Both rejections were made on the record applying 35USC103 (see p. 3, lines 6 plus and page 4, lines 19 plus).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven L. Weinstein whose telephone number is 571-272-1410. The examiner can normally be reached on Monday-Friday 7:00 A.M-3:00 P.M..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rena Dye can be reached on 571-272-3186. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Steve Weinstein/
Primary Examiner, Art Unit 1794